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OFFICE OF PETITIONS

In re	:
Perkins, et al.	:
Application No. 10/087,897	: DECISION REGARDING
Filed: March 1, 2002	: PATENT TERM ADJUSTMENT
Attorney Docket No. 006759.00016	:
	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705", filed February 3, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred twenty-nine (229) days to five hundred thirty-three (533)days.

The application for patent term adjustment is **DISMISSED**.

On November 10, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred twenty-nine (229) days. On February 3, 2006,

Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is five hundred thirty-three (533) days.

Applicants state that the application is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of two hundred twenty-nine (229) days based on an adjustment for PTO delay of five hundred thirty-three (533) days pursuant to 35 U.S.C. 154(b)(1)(C)(iii) and 37 C.F.R. § 1.703(b)(4), reduced by Applicants' delays of three (3) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and three hundred one (301) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustments of three (3) and three hundred one (301) days are at issue.

A review of the application file reveals that applicants filed an Information Disclosure Statement (IDS) on July 19, 2005, after they had previously filed a Reply Brief on September 21, 2004. § 1.704(d) states that an IDS will not be considered a failure to engage under (c)(8) if it is accompanied by a statement that "each item of information contained in the information disclosure statement was **first** cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by an individual in 1.56(c) more than thirty days prior to the filing" of the IDS.² The IDS filed on July 19, 2005 did not contain a proper 37 C.F.R. § 1.704(d) statement, because it lacked the language of "first cited". Accordingly, applicant delay with respect to this filing should have been three hundred one (301) days.

In addition, the adjustment of three (3) days has been reviewed and found to be correct. The record reveals that applicants filed a response to a June 23, 2003 Office action on September 26, 2003. It is true that the response contained a certificate of mailing dated September 23, 2003. However, under 37 C.F.R. § 1.703(f), "the date indicated on any certificate of mailing or transmission shall not be taken into account" in the PTA calculation. See also Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14 (Oct. 3 2000). Accordingly, the applicant delay of three (3)

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

² Emphasis added.

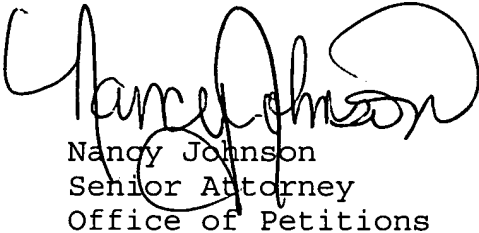
days for the filing of the response on September 26, 2003 was proper.

In view thereof, the correct determination of patent term adjustment at the time of mailing of the Notice of Allowance is **two hundred twenty-nine (229) days**.

Receipt of the fee under 37 C.F.R. § 1.18(e) is acknowledged.

The matter is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Nancy Johnson
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Office of Petitions